<u>REMARKS</u>

Claims 1 to 4 and 10 to 13 are pending in this application. Previously, claims 5, 8 and 9 were withdrawn from consideration and claims 6 and 7 were canceled without prejudice. Applicant wishes to thank the Examiner for his indication that claims 10 to 12 are allowable. Claims 1 and 13 are rejected and claims 2 to 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

By this amendment Applicant has:

(1) Canceled claim 2, since when amended to incorporate all of the limitations of the base claim, claim 2 would be identical to allowed claim 10;

(2) Amended claim 3 to be an independent claim incorporating all of the limitations of the base claim. No new matter has been added;

(3) Amended claim 4 to be an independent claim incorporating all of the limitations of the base claim, and changing "tortilla" to "pressed dough"; and

(4) Added new dependent claim 14 limiting pressed dough to tortillas.

No new matter has been added by these amendments.

In view of the above amendments and the following remarks, Applicant respectfully submits that this application is in condition for allowance. Accordingly, reconsideration and timely Notice of Allowance are respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

Claims 1 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rubio et al. (U.S. Patent No. 4,938,126) in view of Hayashi et al. (U.S. Patent No. 4,318,678). Applicant respectfully traverses this rejection.

Claim 1 is limited to an apparatus comprising a "means for pivoting the second discharge conveyor about the longitudinal axis between a lower position in which the discharge ends of the first discharge conveyor and the second discharge conveyor **are adjacent**." Claim 13 is limited to an apparatus comprising a "means for pivoting the second discharge conveyor about the longitudinal axis between a lower position in which the discharge end of the second discharge conveyor **is adjacent** to the receiving conveyor."

The Examiner admits that Rubio et al. fail to teach or suggest these limitations and cites to Hayashi to remedy these defect of Rubio et al. However, Applicant respectfully submits that Hayashi et al. fail to teach or suggest this limitation. Hayashi teaches a conveyor (15, 15') that rotates about its discharge end. In Hayashi et al., there is no possibility that the discharge ends of the first discharge conveyor and the second discharge conveyor **are ever adjacent** as recited in claim 1. Moreover, there is no possibility that the discharge end of the second discharge conveyor is ever adjacent to the "receiving conveyor" as recited in claim 13.

As taught in the current disclosure, this unique arrangement of the discharge conveyors results in the advantage of removing the need for synchronization with the receiving (oven) conveyor (emphasis added):

"In the lower position, the second discharge
conveyor is pivoted about the longitudinal
axis such that the discharge ends of the
first discharge conveyor and the second
discharge conveyor are adjacent. This will
be a point where the discharge end of the
second discharge conveyor is sufficiently
close to the discharge end of the first
conveyor so that pieces from the two
discharge conveyors are deposited in near
proximity on the oven conveyor, without need
for synchronization with the oven conveyor.
(p. 5, l. 31 to p. 6, l. 4)

The cited references do not, either alone or in
combination, have the advantage of not needing synchronization
with a receiving conveyor. As explained in the Background
section of the present disclosure, this requirement for
synchronization with the receiving conveyor is a disadvantage of
the prior art:

"Previous systems that have attempted to
combine the output of multiple presses in a
single conveyor system have required close
synchronization between discharge conveyors
and a third deposit conveyor.
Synchronization requires costly components,
necessitates costly and time consuming
adjustments, and limits the flexibility of
the system." (p. 1, ll. 17-20)

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The claimed limitation in the present invention results in a particularly advantageous result, not present in the cited prior art (emphasis added):

> "The timing of the first press 30 and the second press 32, the speeds of the first press conveyor 34, the second press conveyor 40, the first discharge conveyor 36, the second discharge conveyor 42 and the pivoting of the second discharge conveyor 42 are set by the logic controller 28 so as to synchronize the discharge of pieces onto the oven conveyor. <u>The speed of the oven conveyor, however, is adjustable without reference to the timing of the first or second press and without reference to the speed of the first press, first discharge, second press, or second discharge conveyors.</u> The only requirement of the oven conveyor is that the oven conveyor be moving at a minimum speed which is fast enough to off-load pieces from the discharge conveyors without the pieces overlapping. Beyond the minimum speed, the oven conveyor speed may be increased or decreased as desired to alter, for example, the amount of time the pieces spend in the oven. <u>Therefore, synchronization between the discharge conveyors and a deposit conveyor is not required.</u>" (p. 6, ll. 11-22)

The presence of this particular advantage is a secondary consideration that negates any suggestion of obviousness under Section 103.

Additionally, because Rubio et al. fail to teach or suggest a pivoting means, Rubio et al. also fail to teach or suggest a "means for synchronizing the pivoting means with discharge of the first objects from the first discharge conveyor and discharge of the second objects from the second discharge conveyor" as claimed in claim 1 and 13. Applicant respectfully submits that Hayashi et al. fail to remedy this further defect of Rubio et al.

In Hayashi et al., a portion of the objects disposed along a continuous conveyor are lifted off by a second conveyor. The objects are thereafter elevated by the second conveyor, inverted and dropped back down onto the continuous conveyor. Hayashi et al. does not consider the problem faced by the inventor of the present application, that is, how to combine delivery of objects from a first transport conveyor to objects from a second transport conveyor, with minimal or no synchronization with the receiving conveyor.

Finally, Applicant respectfully submits that one skilled in the art would have no motivation to combine Rubio et al. with Hayashi et al., to achieve the solution to the problem presented. The Examiner states that one skilled in the art would be motivated to provide the second discharge conveyor of Rubio et al. with means for synchronizing and means for pivoting in the manner suggested by Hayashi et al. "in order to pivot between a lower position and an upper position to accommodate objects, if desired." Applicant respectfully disagrees. Neither reference deals with the problem solved by this

invention, e.g., minimizing the need for receiving conveyor synchronization.

Applicant submits that one skilled in the art would have no motivation to modify the straightforward apparatus of Rubio et al. with the pivoting conveyor of Hayashi et al. which is used for a substantially different purpose, to solve the different problem of synchronization with a third conveyor. Neither reference teaches nor fairly suggests the key limitation that "the discharge ends of the first discharge conveyor and the second discharge conveyor are adjacent".

Therefore, Applicant respectfully submits that claims 1 and 13 are patentable over Rubio et al. and Hayashi et al., taken alone and in combination. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Objections To Claims 2 to 4

The Examiner objected to claims 2 to 4 as being dependent upon a rejected base claim. The Examiner indicated that claims 2 to 4 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully disagrees with the Examiner as to the rejection of the base claim as explained above. However, in the interest of advancing prosecution, Applicant has amended claim 3 to be in independent form including all of the limitations of the base claim, claim 1. There were no intervening claims. No new matter has been added.

As to claim 2, since when amended to incorporate all of the limitations of the base claim, claim 2 would be identical to allowed claim 10, claim 2 has been canceled.

Claim 4 has been amended to be an independent claim incorporating all of the limitations of the base claim, and changing "tortilla" to "pressed dough". New dependent claim 14 has been added limiting pressed dough to tortillas. No new matter has been added by this amendment. Support for "pressed dough" is found throughout the specification, and particularly at p. 4, lines 23-25; and page 7, lines 2-10.

Accordingly, Applicant respectfully submits that the objection to claims 2 to 4 has been obviated.

CONCLUSION

For the reasons set forth above, Applicant respectfully submits that all of the claims remaining in the application are now in condition for allowance. Accordingly, reconsideration, reexamination and allowance of all claims is requested.

If the Examiner believes a telephone conference would aid in the prosecution of this application, then the Examiner is invited to contact the undersigned at the below listed telephone number.

A fee of $510 is believed due with this communication for a three month extension of time to April 30, 2006. Additionally a fee of $200 is believed due for the addition of two independent claims.

The Commissioner is hereby authorized to charge payment of these fees and any additional fees associated with this communication to Deposit Account No. 19-2090.

Respectfully submitted,

SHELDON MAK ROSE & ANDERSON PC

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